United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2675 B
Pages 6

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

FREDDIE HILTON,

Defendant-Appellant

Docket No. 74-2675

APPENDIX FOR APPELLANT

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LAWRENCE STERN
Of Counsel

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

INDICTMENT

TPP:RLC:mc
F.#735,202

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

74CR 54

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

FREDDIE HILTON,

Defendant

INDICTMENT

Crim. No.

(T. 18, U.S.C., §§2, 371 and 2113(a)(d)(e))

- - - - - - - - - - - - - - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 10th day of April 1973, within the Eastern District of New York, the defendant FREDDIE HILTON knowingly, wilfully and feloniously, by force, violence and intimidation, did take approximately Five Thousand Dollars ($5,000) in United States currency from the persons and presence of employees of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said Jackson Heights Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18, United States Code, Section 2113(a))

COUNT TWO

On or about the 10th day of April 1973, within the Eastern District of New York, the defendant FREDDIE HILTON knowingly, wilfully and feloniously, by force, violence and intimidation, did take approximately Five Thousand Dollars ($5,000) in United States currency from the persons and presence of employees of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said Jackson Heights Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation, and in the commission of these acts, the defendant

FREDDIE HILTON assaulted and placed in jeopardy the lives of employees of the said Jackson Heights Savings and Loan Association, by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2)

COUNT THREE

On or about the 9th and 10th days of April 197[illegible], within the Eastern District of New York, the defendant FREDDIE HILTON knowingly and wilfully, by force, violence and intimidation, did take approximately Five Thousand Dollars ($5,000) in United States currency from the persons and presence of employees of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said Jackson Heights Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation, and in the commission of these acts, the defendant FREDDIE HILTON did on April 9, 1973 at Queens, New York, force one Robert Edgar to accompany him without the consent of the said Robert Edgar from one location in Queens, New York to another location in Queens, New York. (Title 18, United States Code, Section 2113(e) and Section 2)

7/15/74
Raymond
USDJ

COUNT FOUR

On or about and between the 1st day of March 1973 and the 10th day of April 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant FREDDIE HILTON did combine, conspire and confederate together with Avon White, Phyllis Pollard and Twyman Myers, herein named as co-conspirators but not as defendants, to commit offenses in violation of Title 18, United States Code, Section 2113(a), Section 2113(d) and Section 2113(e) by wilfully and knowingly conspiring to take by force, violence and intimidation, from the persons and presence of employees of the Jackson Heights Savings and Loan

Association, 89-01 Northern Boulevard, Queens, New York, monies and things of value in the care, custody, control, management and possession of the said Jackson Heights Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation, and to assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons and, further, as part of said conspiracy, to force the owner of an automobile to be used in the bank robbery to accompany them without the consent of said owner, from one location in Queens, New York to another location in Queens, New York.

In furtherance of said conspiracy, the defendant and co-conspirators committed several overt acts including but not limited to the following:

OVERT ACTS

1. On April 9, 1973 at Queens, New York, the defendant FREDDIE HILTON and co-conspirator Avon White, at gun point, stole a 1967 Chevrolet, New York license plate 998-QDA from Robert Edgar.

2. On April 10, 1973 the defendant FREDDIE HILTON drove the above-described 1967 Chevrolet, New York license plate 998-QDA, from a location in the Bronx, New York to the vicinity of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York. (Title 18, United States Code, Section 371)

A TRUE BILL.

Francis D Rutledge
FOREMAN

Edward R. Korman by DL
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT **COURT**

EASTERN *District of* NEW YORK

_____ *Division*

THE UNITED STATES OF AMERICA

vs.

FREDDIE HILTON,

Defendant.

INDICTMENT

(T. 18, U.S.C., §2, §371, 2113(a)(d)(e))

A true bill,

_____
Foreman.

Filed in open court this _____ *day*

of _____, *A. D. 19*____

_____
Clerk.

*Bail, $*_____

_____

GPO 902-482

Robert L. Clarey
Assistant U.S. Attorney

DOCKET ENTRIES

D. C. Form No. 100
CRIMINAL DOCKET

74CR 54 2 Cr 5 MISHLER, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	AUSA BRUCE CLAREY
vs.	
FREDDIE HILTON	
	For Defendant: Robert Bloom
	350 Broadway- N.Y., N.Y.
	233-3300
Bank Robbery	

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
Fine,			12/23/74	Notice of appeal			
Clerk,				(No Fee)			
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

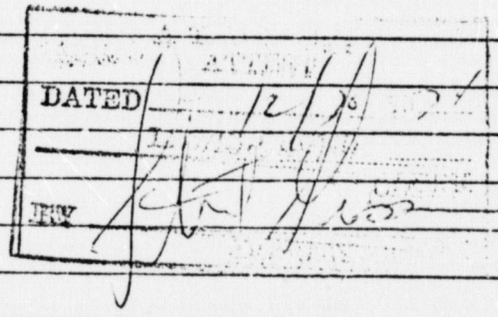
DATE	PROCEEDINGS
1-24-74	Before JUDD, J - Indictment filed.
1-4-74	Petition for writ of habeas corpus ad testificandum filed.
1-4-74	By BARTELS, j Writ Issued, ret. Jan. 10, 1974(petition and writ previously filed as misc. writs on 1-4-74)
1-15-74	Petition for writ of habeas cprpus ad testificandum filed
1-15-74	By JUDD, J - Writ issued, ret. Jan. 17, 1974(writ and petition previously filed as misc. writs on Jan. 15,1974)
1-18-74	Writ retd and filed - executed(previously filed as misc.)
1-24-74	Stenographers transcript filed dated Jan. 17, 1974.
1-28-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
1-28-74	By Mishler, Ch J - Writ Issued, ret. 2-1-74)
2-5-74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Deft

74CR 54

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	arraigned and enters a plea of not guilty- Bail set at $50,000 Surety Bond		
	April 19, 1974 to set date for trial		
-5-74	Notice of appearance filed		
2-6-74	Writ retd and filed - Executed		
2-6-74	Notice of readiness for trial filed		
3-7-74	Magistrate's file 73 M 1930 inserted into CR file.		
4-19-74	Before MISHLER, CH J - case called - July 8, 1974 for trial		
4-25-74	By MISHLER, CH.J.- Order appointing counsel filed (order signed 4-23-74)		
7-3-74	Petition for writ of habeas corpus ad prosequendum filed		
7-3-74	By PLATT,J.- Writ issued, ret. 7-8-74		
7-8-74	Before MISHLER, J case called -reset for trial on July 11, 1974.		
7-9-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed.		
-9-74	By MISHLER, CH J - Writ Issued, ret. July 15, 1974.		
7-9-74	Writ retd and filed- executed		
7-15-74	Before MISHLER, CH J - case called - deft Freddie Hilton & counsel Robert Bloom present - defts motion to dismiss count (3) is granted. defts motion to dismiss the indictment is denied. Trial ordered and BEGUN - Jurors selected and sworn - trial contd to July 16, 1974 at 9:30 am.		
7-15-74	Writ retd and filed - Executed.		
7-15-74	By MISHLER, CH J.- 3 Orders of Sustenance filed.		
7-16-74	By MISHLER, CH J - Segregation Order filed.		
7-16-74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Trial resum Motion by deft to exclude all witnesses from courtroom is granted-Motions by the deft for a mistrial denied-Trial contd to 7-17-74 at 9:30 A.M.		
7-17-74	Before MISHLER, CH J - case called - deft & counsel Robert Bloom present - trial resumed - Identification hearing held on motion to suppress - ,mtx motion to suppress is denied - hearing concluded - trial continued - Both sides rest - Motion by deft for judgment of acquittal is denied - Motion by the deft for a mistrial is denied - trial contd to July 18, 1974 at 9:30 am.		
7-18-74	Before MISHLER, CH J - case called - deft & counsel R.Bloom present - trial resumed - at 10:45 AM the jury retired for deliberation- at 7:05 PM the jury retd and asked to suspend for the day. Jury is to return on July 19, 1974 at 9:00 am for further delberation.		
7-19-74	Before MISHLER, CH J - case called - deft not present - counsel Robert Bloom present - deft waived his right to be present in court -Trial resumed - at 9:15 AM the Jury continued their deliberations - at 2:25 PM		

74 CR--54
CRIMINAL DOCKET

DATE	PROCEEDINGS
	the Jury returned and rendered a verdict of guilty as to count
	Jury polled - at 5:35 PM the jury returned with a verdict of not
	guilty as to counts 1 and 2 - jury polled and discharged - trial
	concluded - all motions reserved until time of sentence - sentenc
	adjd without date.
7-30-74	5 volumes of stenographers transcripts filed (pgs 1 to 785)
7-30-74	Voucher for compensation of Expert Services filed.
9-6-74	Stenographers Transcript dated 7-19-74 filed
12/4/74	Petition for writ of habeas corpus ad prosequendum filed
12/4/74	By MISHLER, CH.J.- Writ issued, ret. 12/23/74
12/6/74	Before MISHLER, CH.J.- Case called- Sentence adjd to 12/23/74 on
	consent
12/23/74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Mot
	deft to set aside the verdict denied- Deft sentenced to term of
	ment for a period of 5 years- Court advised deft of his right to
	Clerk tofile notice of appeal without fee- Pre-sentence report mar
	Exhibit 1 and is ordered sealed for possible review by the court
	appeals- exhibit held by the A.U.S.A.
12/23/74	Judgment and Commitment filed- certified to Marshal
12/23/74	Notice of appeal filed
12/23/74	Docket entries and duplicate of notice of appeal mailed to c of
12/24/74	Writ retd and filed- executed
12/30/74	Stenographers Transcript dated 12/23/74 filed
12/30/74	Record on appeal certified and handed to Robert Bloom for deliver
	court of appeals



D. C. 109

CHARGE TO THE JURY

We have reached that part of the trial where it becomes my duty to instruct on the applicable law.

I think a good starting point is an instruction on what the various participants in a Jury trial are obligated to do and what their functions and authority are. First we have the lawyers who represent litigants; they are partial, at times zealous in their advocacy, and that is the way it should be. The theory is that by the presentation and the cross-examination evidence will develop for the Jury to consider and see in the expectation that the Jury will arrive at the findings of fact based on the truth of the evidence submitted: so your function, it is said, is a search for the truth.

There is a distinct difference in function and attitude between the lawyers on the one hand and the Court and Jury on the other. The Court and Jury are objective, disinterested. The Court is expected to make rulings based on the law, impartially, and the Jury is expected and charged with the duty of making fact findings based on the evidence, and having made those fact findings, then to decide the guilt or innocence of the defendant as to each charge in the indictment in accordance with the law as the Court charges it.

The Jury is the sole judge of the facts, and that

means that you, and you alone determine what happened. You and you alone determine the state of mind, whether the Government proved that the defendant possessed criminal intent which is a finding of fact.

I have no opinion as to the guilt or innocence of this defendant on any of the charges, I leave that solely with you.

The case is entitled, United States of America against Freddie Hilton. In a Court of law the United States of America has no better right and stands no higher than any litigant, so the parties are looked at as equals and the obligations fixed upon the Government are assumed and must be performed by the Government as if it were an individual.

(Continued on next page.)

If each participant in the trial knows and understands its duty and authority and function and understands the duty and authority of the others, then we have the ingredients of a fair trial. But we must start out with the Jury being willing to be fair, and fair to both sides. The Jury must start out being willing to accept the law as the Court charges it, even though you may disagree with the law. One of your duties is to accept the law.

This case is United States of America against Freddie Hilton. There are three charges in the indictment, Count 1, Count 2, and Count 4. Pay no attention to the fact that they are not in numerical order. Count 1, Count 2 and Count 4.

As you will learn, Counts 1 and 2 are really one charge, Count 2 being the graver and more serious offense, Count 1 being the lesser offense.

The defendant has pleaded not guilty to each and every charge of the indictment. You are not to consider the allegations in the indictment as any proof of the charge. The proof is separate and apart from the indictment and comes from the mouths of the witnesses before you, from the evidence, and that includes the exhibits marked in evidence, and as I will charge you

later, the fair and reasonable inferences to be drawn from the established facts based on your good common sense and experience.

The defendant is presumed to be innocent of each and every charge in the indictment, that means the law requires you to conclude at the outset of the trial that the defendant is innocent of the charges and that presumption, that cloak of innocence continues throughout the trial and throughout your deliberations and is sufficient to acquit the defendant. If the Government fails to prove the contrary to innocence, that is the guilt of the defendant by proof beyond a reasonable doubt, then the presumption of innocence prevails and you must acquit.

So as I said once before to you:

It really is not correct to say that your duty is to determine whether or not the defendant is innocent, but it is your duty to determine whether the Government proved the guilt of the defendant by proof beyond a reasonable doubt.

You will consider Counts 1 and 2 as one concept and Count 4 as another: You will consider them as if there were two charges in this indictment, the first two being, as I say, a variation of the same charge.

A reasonable doubt is the kind of doubt a reasonable Juror would have after carefully weighing all the evidence. A reasonable doubt is based on reason and common sense and the state of the record as distinguished from some whim or fancy or some emotional doubt that you may have because you are called upon to perform an unpleasant task. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act.

If after a fair and impartial consideration of all the evidence you are not satisfied that the Government has proved the guilt of the defendant, in other words if you have such doubt as would cause you as a prudent person to hesitate before acting in a matter of importance to yourself, then you have a reasonable doubt and in that case it is your duty to acquit.

Proof beyond a reasonable doubt is therefore proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important and weighty of your own affairs.

Now the Government's burden is not to prove that every bit of testimony presented before you is true beyond a reasonable doubt; it is not to prove that every exhibit that is offered to you is true beyond a

reasonable doubt; it is not to prove the guilt of the defendant beyond all doubt: the burden is to prove the guilt of the defendant beyond a reasonable doubt, and that means to prove all the essential elements of the crime charged beyond a reasonable doubt. Later in the charge I will advise you as to what the essential elements of the crimes charged are.

A reasonable doubt may arise from the failure of the Government to produce evidence. The defendant does not have to prove his innocence, he does not have to offer any proof, he has the right to rely on the failure of the Government to prove its case.

What is evidence:

Evidence is the method by which the law proves or disproves a disputed fact.

There are two general classifications of evidence, one is direct evidence and the other is indirect or circumstantial evidence. Direct evidence is the testimony of witnesses, of what those witnesses saw or heard, while circumstantial evidence is the method by which the Jury is called upon to draw fair and reasonable inferences from established facts in order to prove or disprove a disputed fact.

I will give you an example:

If you were sitting here as a Jury in a personal injury action and the plaintiff were suing the defendant for personal injuries claimed through the negligence of the defendant's operation of a motor vehicle; and assuming that the specific charge or claim was that the defendant failed to stop at a particular stop sign before proceeding, in violation of the Motor Vehicle Traffic Laws of the State of New York, and the defendant, denying that he failed to stop, he says, "I did stop," well, that is the disputed fact, that is what is important and you must identify that disputed fact

Assume for these purposes further that my law clerk and myself were standing on the corner that had the stop sign, he had his back to the stop sign; assume that I were talking with him and I had my eyes turned towards the roadway and had the stop sign directly in view:

Now if I werecalled to testify, I might testify that I saw the defendant's motor vehicle, well, a 1970 or '71 Cadillac, speeding along at about 65 miles an hour; I saw it proceed at the same speed past the stop sign and strike the plaintiff.

Now that is direct evidence of that disputed fact: Did the defendant pass that stop sign without

stopping.

My courtroom deputy, on the other hand, did not see the car pass the stop sign, but he is competent to testify, to testify to the circumstances from which the Jury might draw a reasonable inference that the car did not stop.

He might say that while talking to me from a peripheral vision he saw thecar doing about 65 miles an hour; that two or three seconds later the car had traversed approximately 150 feet; that he again saw it just as it was about to strike the plaintiff.

Now from those established facts I think you might draw a reasonable inference, based upon your good common sense, that that motor vehicle failed to stop at the stop sign.

What would be the established fact:

Well, that the car was travelling 65 miles an hour and traversed the hundred and fifty feet over a period of maybe three seconds. Obviously the car could not have stopped and then proceeded in this period of time. So that there is an inference that the car passed the stop sign without stopping.

Now there is the direct evidence and the circumstantial evidence of the same disputed fact.

The law does not hold that one form of evidence is of better quality than the other, the law only requires that the Government prove all the essential elements of the crimes charged on both the direct and the circumstantial evidence.

You will recognize that one of the elements of a crime is criminal intent, which is a state of mind, what was the defendant thinking of, was his conduct willful, and this is something that rarely can be proved, if ever, by direct evidence; it is the circumstances, what happened, from which you may draw an inference as to whether the Government has proved criminal intent.

(Continued on next page.)

The evidence in this case is the sworn testimony of the witnesses and the exhibits received in evidence; that is called the record and it is upon that thatyou will make your fact findings and your ultimate decision on each of the counts.

Statements of counsel made in the openings and closings are not evidence. They serve useful purposes, the opening is a guide and the closing or summation arguments are means of focusing attention of the Jury on what the lawyers deem to be the important evidence in the case. Both parties offer concepts, Mr. Bloom theories of exculpation, which means a finding of not guilty, and Mr. Clarey on behalf of the Government theories of inculpation, which means theories of guilt.

You consider those arguments, the thoughts, the concepts, they will help you in arriving at a fair and just verdict.

Some random statement may have been made in Court, and I don't recall any, but if I made some inappropriate statement just disregard it -- incidentally, if I asked a question, which I think was rare in this case, I might have asked one or two, don't place any special emphasis on the answer to the question or the question itself because I asked it, I asked the question only because it

might have occurred to me there might have been a fudgy area, something that confused me, and I thought it might be helpful to the Jury if I asked the question, and that was the only reason. If you did not think it was of any value, don't pay any attention to it.

Evidence stricken from the record should not be considered by you. As I directed the reporter to physically strike it from his notes, so you must figuratively strike it from your recollection, the theory again being that you are to consider what is only lawful evidence.

Don't attach any significance to the rulings that I made or the fact thatone lawyer may have objected to questions more than the other. These are solely matters of law not to be considered by you in arriving at your decision.

It might be helpful to define an inference and a presumption since I have used those terms:

An inference is a conclusion which reason and common sense leaves the Jury to draw from the facts which have been established by the evidence in the case. An example of that is, of course, the method by which the Jury may arrive at a fact which was disputed through circumstantial evidence. It is a discretionary matter,

one which is within the discretion of the Jury, and is based on reason, experience and common sense.

A presumption, on the other hand, is a conclusion which the law requires the Jury to make and continues only so long as it is not overcome or outweighed by evidence in the case to the contrary. The example of that, of course, is the presumption of innocence, and the standard of proof, of course, to overcome that presumption is proof beyond a reasonable doubt.

This case, as in most cases, brings the Jury to an important task it has, and that is assessing the credibility, the believability of the witnesses. You, the Jurors, are the sole judges of the credibility of the witnesses, which means the believability of their testimony and the weight their testimony deserves.

Scrutinize the testimony given and the circumstances under which each witness testified and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence; his motive and state of mind, in other words the reason for him testifying, what motivates him, what his state of mind is as he sits before you and testifies; the demeanor and manner of the witness while on the witness stand,

did he answer fully and forthrightly; the witness' own ability to observe the matters as to which he or she has testified, whether he or she shall have impressed you as having an accurate recollection of those matters; the relation that each witness might bear to either side of the case; the manner in which each witness might be affected by the verdict: the extent to which the witness was either corroborated or contradicted by other evidence in the case.

Now, we had one expert witness, a fingerprint expert. Normally a witness is not permitted to express opinions or conclusions, but an expert witness is in a different classification. An expert, by reason of study or experience, attains a certain expertise in his field and so he may express an opinion within that field. But you do not have to accept that witness' testimony merely because we classify the witness as an expert: You judge his testimony as you would any other witness.

The las does not compel a defendant in a criminal case to take the witness stand and testify. No presumption of guilt may be raised and no unfavorable inference of any kind may be drawn from the failure of a defendant to testify. The defendant, as previously charged, may

rely on the failure of the Government to prove its case. It would be improper for you to even discuss the failure of the defendant to take the witness stand during your deliberations.

Evidence that at some prior time a witness made a statement inconsistent with the testimony he gave before you may be considered by you as impeaching evidence. You may also consider the failure of a witness to disclose a matter -- the failure of Avon White -- before the Grand Jury to identify an individual -- as an inconsistent statement.

In determining whether a statement is inconsistent, you should take into consideration the normal variations that people have in their method of retelling an account of events. As was pointed out in summation, if a witness were to restate what occurred word-for-word pause-for-pause, and gesture-for-gesture, you might suspect that testimony as being rehearsed. So use your good common sense in getting the feel as to whether the prior statement is inconsistent, whether it was just forgetfulness in failing to disclose or whether it was an intentional withholding of a fact.

Now whether a prior statement is inconsistent with the witness' testimony is a matter solely for the Jury,

but in considering whether it is inconsistent and in considering the weight to be given to it, take into consideration all the circumstances under which the witness made the prior inconsistent statement, and then you decide how or if it affects the witness' credibility, his believability or her believability and the extent to which it will affect credibility and the weight you will give to the testimony given before you.

Avon White testified that he participated in the bank robbery; he also testified that he was convicted of a number of felonies. Avon White is not incompetent to testify because he participated in the bank robbery, nor because he was convicted of a felony. You may take and you should take both of those matters into consideration in determining the credibility of his testimony.

Avon White's testimony as a participant in the bank robbery alone if believed by you to be true beyond a reasonable doubt is sufficient to sustain a verdict of guilty, even if his testimony is not corroborated. Now whether or not his testimony is corroborated, I will leave solely with you, but you should not convict the defendant on the testimony of Avon White alone unless

you believe that testimony to be true beyond a reasonable doubt.

(Continued on next page.)

1/4 ekhb

Charge of the Court

If any witness has been shown to have testified before you falsely as to a material fact and that testimony was knowingly given as false testimony, then you may disregard all that witness' testimony on the theory that he is unworthy of belief or that she is unworthy of belief. However, the jury, of course, has the discretion of accepting that portion of the testimony that the jury finds is believable.

I should now like to turn to the charges in the indictment, first Counts One and Two, and I will read them in numerical order and then I will explain how Count Two is graver than Count One.

Count One charges:

"On or about the 10th day of April 1973, within the Eastern District of New York, the defendant Freddie Hilton knowingly, wilfully and feloniously, by force, violence and intimidation, did take approximately $5,000 in United States currency from the persons and presence of employees of the Jackson Heights Savings & Loan Association, 8901 Northern Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said Jackson Heights Savings & Loan Association, the deposits of which institution were then and there

insured by the Federal Savings & Loan Insurance Corporation."

This is in violation of 18, United States Code, Section 2113(a).

Now, Count Two will read exactly as Count One reads until I come to the last phrase, and I will point it out to you when I come to it.

It says: "On or about the 10th day of April 1973, within the Eastern District of New York, the defendant Freddie Hilton knowingly, wilfully and feloniously, by force, violence and intimidation, did take approximately $5,000 in United States currency from the persons and presence of employees of the Jackson Heights Savings & Loan Association, 8901 Northern Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said Jackson Heights Savings & Loan Association, the deposits of which institution were then and there insured by the Federal & Loan Insurance Corporation."

Now, until that point it is exactly the same, and this is what is added:

"and in the commission of these acts, the defendant Freddie Hilton assaulted and placed in

jeopardy the lives of employees of the said Jackson Heights Savings & Loan Association, by the use of a dangerous weapon."

This is in violation of 18, United States Code, Section 2113(d) and Section 2.

Although the charge reads that the defendant Freddie Hilton committed an armed robbery of the Jackson Heights Savings & Loan Association, and although Count Two reads that Freddie Hilton assaulted and placed in jeopardy the lives of employees of said Jackson Heights Savings & Loan Association by the use of a dangerous weapon, the claim of the Government is that he aided and abetted in the armed robbery and that he aided and abetted in placing the lives of employees in jeopardy, and I will come to it shortly, but that is what we call the aiding and abetting statute.

In order for the Government to prove its case of aiding and abetting against Freddie Hilton, it must also prove all of the essential elements of the crime of armed bank robbery.

What are the essential elements of the crime charged in Counts One and Two? Well, I think it is prudent to refer to the statute on which the indictment is based.

4 Charge of the Court

Most, if not all of our criminal law is codified, and Title 18 merely refers to one of the headings of the law under which it is codified, and this happens to be Crimes and Criminal Procedure, and 18, United States Code, Section 2113(a) says the following:

"Whoever by force and violence or by intimidation takes or attempts to take from the person or presence of another any property or money belonging to or in the care, custody, control, management or possession of any bank or any savings and loan association," violates that section.

Now, a bank is described under Subdivision (f), "as used in this section, the term 'bank' means any bank" -- I am sorry, it is under (g): "as used in this section, the term 'savings and loan association' means any federal savings and loan association insured by the Federal Government.

That is the reason the Government had to prove that this bank was insured by the Federal Savings & Loan Insurance Corporation, that is what makes it a federal crime. The Government has to prove that a federal agency, the Federal Savings & Loan Insurance Corporation, insured the money and savings of the

Jackson Heights Savings & Loan Association.

Now, that is the statute upon which Count One is based.

Count Two, which adds the placing of lives in jeopardy by the use of dangerous weapons, finds its authority in Subsection (d):

"Whoever in committing any offense defined in Subsection (a), assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device," violates Subsection (d).

So the second count is the more serious count because it has that additional element.

The Government must prove the five following elements of the crime charged by proof beyond a reasonable doubt in addition to proving that the defendant, Freddie Hilton, aided and abetted in the armed bank robbery.

One, that on April 10, 1973 armed robbers took the sum of approximately $5,000 in United States currency from the person or presence of employees of the Jackson Heights Savings & Loan Association;

Two, the act of taking such money was by force or violence or by means of intimidation;

Three, that those acts were knowingly and

wilfully performed, in other words, that is the criminal intent which must be shown;

Four, that the Jackson Heights Savings & Loan Association was at that time insured by the Federal Savings & Loan Insurance Corporation;

And, five, the act of putting in jeopardy the life of any person by the use of dangerous weapons.

The Government has to prove all of those elements beyond a reasonable doubt in order to sustain the charge in Count Two.

When I give you the case for your determination, I will ask you to first consider Count Two, and then, if you find the defendant not guilty of Count Two, then consider Count One. If you find him guilty of Count Two, since that is the more serious crime, and since Count One is included, I will not ask you to consider Count One.

In order to prove Count One, the Government will have to prove the first four elements by proof beyond a reasonable doubt. The last element, that in the bank robbery the lives of employees of the Jackson Heights Savings & Loan Association were placed in jeopardy by the use of dangerous weapons, that last element is not a part of Count One.

Charge of the Court

Now, on criminal intent, which is expressed in the statute by the word "wilfully," which means that the Government must prove beyond a reasonable doubt that the defendant was aware of what he was doing. In this case it refers to the bank robbers being aware of what they were doing and that what they were doing was a violation of the law.

Putting lives in jeopardy by the use of dangerous weapons means that the Government must prove beyond a reasonable doubt that the weapons used in the bank robbery were in fact operable and loaded and were capable of inflicting serious injury or death.

To take, Or attempt to take by "intimidation," means to wilfully take by putting the employees in fear of bodily harm. Such fear may arise from the wilful conduct of the accused or must arise from the wilful conduct of the accused, the bank robbers in this case, rather than from some mere tempermental timidity of the victim.

A taking, or an attempted taking, "by intimidation," must be established by proof of one or more acts of the bank robbers in such a manner, and under such circumstances that it would produce fear in the ordinary person, fear of bodily harm.

Charge of the Court

As I said, the Government does not claim that this defendant entered the Jackson Heights Federal Savings & Loan Association on April 10, 1973. The Government's claim is that the defendant aided and abetted the armed robbery of that bank on that day:

One, by stealing a 1967 Chevrolet owned by Professor Edgar at the Queens College Campus;

And two, by assuming the role of the driver of the getaway car, in driving Avon White and two other robbers to the Jackson Heights Federal Savings & Loan Association on April 10, 1973.

The Government must prove beyond a reasonable doubt that such acts of aiding and abetting were knowingly done and wilfully done.

The Government does not have to prove all the acts of aiding and abetting, it does have to prove that it was knowing and wilful.

Now, the aiding and abetting statute says the following, and this is Section 2, and that is why Section 2 is mentioned in the indictment:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

"Whoever wilfully causes an act to be done,

which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, an aider and an abettor is the same as a principal.

If you find that the Government proved beyond a reasonable doubt that defendant and another participated in the theft of Professor Edgar's car on April 9, 1973 at Queens College and proves nothing more, it isn't enough because the crime in aiding and abetting must show by proof beyond a reasonable doubt the criminal intent to commit this crime, not another crime. Just reject from your consideration whether stealing of the car alone might constitute another crime. This defendant is charged with bank robbery and in aiding and abetting bank robbers, there is nothing else here.

The Government must prove beyond a reasonable doubt that he stole this car with the intent and knowing that it was to be used the next day in the bank robbery of the Jackson Heights Savings & Loan Association; that is the criminal intent which the Government must prove. If they do not prove that, then they haven't proved the crime of aiding and

abetting in the bank robbery.

The same is true if you find that the Government proves that the defendant Freddie Hilton indeed drove the bank robbers to the vicinity of the bank; that fact alone does not establish the crime of aiding and abetting in the bank robbery; the Government must prove beyond a reasonable doubt that this defendant drove Avon White and the other bank robbers to the bank knowing that the purpose in driving them there was to give them access to the bank to rob the bank.

So the criminal intent is as specific as that; he must have known that he was driving them there to rob the bank, and if the Government doesn't prove that beyond a reasonable doubt, then they haven't proved criminal intent.

In other words, every person who wilfully participates in the commission of a crime may be found to be guilty of that offense if the participation is wilful, if done voluntarily and intentionally and with a specific intent to do that which the law forbids.

In order to aid another to commit a crime, to aid and abet another to commit a crime, it is necessary that the accused wilfully associate himself in some way with the criminal venture, and wilfully participate

in it as he would in something he wishes to bring about; that is to say, that he wilfully seek by some act to make the criminal venture succeed.

Now, we will go to the charge in Count Four of the indictment. When I read it to you, and I will explain it to you, it will sound somewhat like the charge I gave you on aiding and abetting. The one clear distinction I can make is one in theory, the idea, the concept.

It might be best if I read the section upon which the indictment is based. It is known as Title 18, again it is the same title, but this is Section 371 and in it the Congress made the following a crime:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy," the crime is complete.

To emphasize, "if two or more persons conspire to commit any offense."

The theory is that the offense need not be completed in order for that section to be violated.

6 Charge of the Court

It is the agreement, the getting together to perform the illegal act that is the crime, and it is completed when one or more persons who are a part of this combination perform an act knowingly in furtherance of the object of the conspiracy.

A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose. A conspiracy is a kind of partnership in criminal purposes.

Now the mere similarity of conduct, the mere association, the gathering together, even the presence of the defendant during the discussions, if you find that there were discussions, even his knowledge that a conspiracy was being formed or organized is not enough to bring a defendant into the conspiracy. However, the evidence in the case need not be based on a formal agreement and it need not express all the terms specifically. It is not like in a large business where people sit down, as in a partnership, and say, "Well, this is your function, that is your function." What the evidence in the case must show beyond a reasonable doubt in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance or tacit

understand came to a mutual understanding to try to accomplish an unlawful purpose. In this case, the Government must prove beyond a reasonable doubt that they came to some understanding, they knew, they got together for the purpose of robbing the bank.

Before you may find the defendant became a member of a conspiracy, the Government must prove beyond a reasonable doubt that the conspiracy as charged in the indictment existed at or about the time charged and for the purpose charged, to wit, to rob the Jackson Heights Savings & Loan Association, and that the defendant wilfully participated in the unlawful plan with the intent to advance a purpose or object of the conspiracy.

Again, in order to bring this defendant into the conspiracy, the Government must prove beyond a reasonable doubt that his participation was knowing and wilful; that he was aware of what was going on and he knew, and that when he had these discussions, if you believe the evidence, or if discussions took place that he knew that the conversations and the discussions were had for the purpose of getting together to rob the bank.

The Government must prove four essential

elements of the crime charged in order to sustain the charge of conspiracy in Count Four:

One, that the conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged;

Two, that the accused wilfully became a member of the conspiracy, which means that it must be shown by direct testimony of the witnesses as to what this defendant said or did;

Three, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged;

And, fourth, that such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

(Continued on next page.)

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Charge

THE COURT: (Continuing.) Now, Count 4 reads as follows:

"On or about and between the 1st day of March 1973 and the 10th day of April 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant Freddie Hilton did combine, conspire and confederate together with Avon White, Phyllis Pollard and Twymon Myers, herein named as co-conspirators but not as defendants, to commit offenses in violation of Title 18, United States Code, Section 2113(a), Section 2113(d) and Section 2113(e) by willfully and knowingly conspiring to take by force, violence and intimidation, from the persons and presence of employees of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York, moneys and things of value in the care, custody, control, management and possession of the said Jackson Heights Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation, and to assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons and, further, as part of

said conspiracy, to force the owner of an automobile to be used in the bank robbery to accompany them without the consent of said owner, from one location in Queens, New York to another location in Queens, New York,

"In furtherance of said conspiracy, the defendant and co-conspirators committed several overt acts including but not limited to the following:

"Overt Acts.

"1. On April 9, 1973 at Queens, New York, the defendant Freddie Hilton and co-conspirator Avon White, at gun point, stole a 1967 Chevrolet, New York license plate 998-QDA from Robert Edgar.

"2. On April 10, 1973 the defendant Freddie Hilton drove the above-described 1967 Chevrolet, New York license plate 998-QDA, from a location in the Bronx, New York to the vicinity of the Jackson Heights Savings and Loan Association, 89-01 Northern Boulevard, Queens, New York."

This is in violation of Title 18, United States Code, Section 371.

Now you will shortly be excused from the Courtroom to deliberate on the matter before you.

As I have said, you are to consider the

evidence free of all bias, prejudice or sympathy. Each of you must reach your verdict through your own mental processes. It is wrong for any juror to abandon his own obligation and say, I will go along with whatever you say. The defendant is entitled to twelve seperate verdicts, the government is entitled to twelve separate verdicts. On the other hand, it is improper for a juror to take an intransigent position and refuse to discuss his determination with anyone else and give no reasons for it. You should discuss the evidence in the case; the jury process is a deliberative process, it is an exchange of ideas and there should be a complete discussion of the evidence. If you have arrived at a determination tentatively at some point and after discussing it with your fellow jurors you find that your first view is wrong, then you have the obligation to give up that view first held that you find is erroneous and make a determination on what you find the testimony to show.

During your deliberations you may have occasion to ask that some testimony be read. Try to identify the subject matter of it, and if you possibly can, the witness who testified.

All your communications will come through your foreman to the marshal and to me.

Do not tell me how you stand at any time during the deliberations. When you have arrived at a unanimous verdict, all you need do is write me and say, We have a verdict. Don't tell me what the verdict is, just, We have a verdict, and I will call you into the Courtroom. I will then ask the foreman to stand, and I will say in effect, in United States against Freddie Hilton, how do you find the defendant on Count 2, guilty or not guilty. If you say guilty, I will not ask you about Count 1, but if you say not guilty, I will ask you about Count 1 and then you will give me the verdict.

I will then go to Count 4, How do you find the defendant as to Count 4, guilty or not guilty, and then I will turn to Juror Number 1, then to Juror Number 2 and I will ask whether you heard the verdict as rendered by the foreman, then I will ask whether that is your verdict, then to Juror Number 3, and so on, until Juror Number 12, and if all the jurors agree in open Court on the verdict, then we know that we have a verdict by the jury in the case on trial.

Now I will ask you to take leave of the Courtroom.

Don't start your deliberations yet, I must discuss some matters with the lawyers.

The jury is excused.

(At 10:35 o'clock a.m. the jury left the Courtroom.)

THE COURT: Mr. Clarey, any exceptions?

MR. CLAREY: Your Honor, I have no objections nor exceptions, but I have one request.

Your Honor, I did not hear when you finished discussing the fact that the government must prove intent, I did not hear an instruction concerning proof of intent by circumstantial evidence. I would request that instruction.

THE COURT: I think I charged originally that one of the elements of the crime charged which is usually proved by circumstantial evidence is criminal intent, state of mind. I think that is enough.

MR. CLAREY: I would except to your Honor's refusal to give an instruction concerning proof of intent by circumstantial evidence, I would say that it usually comes right after the discussion of intent, I did not hear it.

THE COURT: I don't have a set form for my charge, as you know, but I know I did say it and I